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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/989,007	11/21/2001	Judith C. Clark	040094/0101	9546

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WASHINGTON, DC 20007

EXAMINER

SPERTY, ARDEN B

ART UNIT	PAPER NUMBER
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1775

DATE MAILED: 05/07/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

IN

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/989,007	CLARK, JUDITH C.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Arden B. Sperty	1775	

-- **Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 April 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) 1,2,10,11,13-20,24-38 and 43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3-9,12,21-23,39-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>2,3</u> | 6) <input type="checkbox"/> Other: _____                                    |

## **FIRST OFFICE ACTION**

### ***Election/Restrictions***

1. Applicant's election of Group I in Paper No. 6 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). The response was further incomplete because the required election of species was not addressed. A subsequent phone call to Phillip Articola on April 15, 2003 resulted in the election of Species 2: claims 8, 9, and 12. Therefore, the claims addressed in this office action include generic claims 3-7, 21-23, 39-42 and elected Species 2, claims 8, 9, and 12.

### ***Specification***

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Claims 5-6 require a "connecting element" which is not described in the specification. There is also no description of an assembly in which an element is "disposed above a remaining portion of the backer/stabilizer." Claims 8-9 and 12 require an "affixing element" which is not described in the specification.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Art Unit: 1775

✓ 4. Claims 5-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear what is intended as the connecting element.

✓ 5. Claims 8-9 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear what is intended as the affixing element. Claim 8 also references a "second adhesive strip," yet there is no first adhesive strip.

✓ 6. Claim 12 recites the limitation "the elastic band." There is insufficient antecedent basis for this limitation in the claim.

✓ 7. Claims 40-41 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear which "object" is referred to in claim 40 line 4 and claim 41 line 2 since there are three "objects" in claim 39.

✓ 8. Claims 37 and 42 are rejected because of the use of the trademark COMMAND STRIP. According to MPEP 2173.05(u), "... [A] trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. ... The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. Thus, the use of a trademark or trade name in a claim to identify or describe a material or product would not only render a claim indefinite, but would also constitute an improper use of the trademark or trade name." Replacing the trademark name with the description of the material would overcome this rejection.

*Claim Rejections - 35 USC § 103*

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 3-4 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over *The American Heritage Dictionary of the English Language, Third Edition* in view of USPN 5,896,592 to Santa Cruz, USPN 5,004,144 to Selga, and USPN 5,123,139 to Leppert.

Regarding claim 3, the definition of “Velcro” clearly anticipates an attachment device for a first object to be releasably attached to a second object. Velcro by definition comprises first and second releasably attachable units, each attached to an object by an attachment means. Although references do not always disclose specific means of attaching Velcro to an object, the selection of the best notoriously well-known attachment means for a particular application would be obvious to one of ordinary skill in the art. Such obvious and notoriously well-known methods of attaching Velcro include a double-sided sticky foam tape analogous to Applicant’s claimed backer/stabilizer (foam) with a means (sticky tape) for attaching the backer/stabilizer to the first object and also analogous to Applicant’s claimed means for attaching the second releasably attachable unit to the second object.

Regarding claim 4, the reference does not disclose the means of attaching Velcro to a first object. USPN 5,896,592 to Santa Cruz teaches glue as an attachment means (col 3, lines 44-46). USPN 5,004,144 to Selga teaches sewing as an attachment means (col 2, lines 56-60). USPN

Art Unit: 1775

5,123,139 to Leppert teaches foam adhesive as an attachment means (col 3, lines 24-27). Absent a showing of criticality with the claimed attachment means it is the Examiner's position that it would have been obvious to one of ordinary skill in the art to use the best materials suited for a particular application, including those taught by Santa Cruz, Selga and Leppert and the other claimed materials, to attach Velcro to an object because they are notoriously well-known attachment means.

Regarding claim 7, although the reference does not specifically disclose the claimed backer/stabilizer materials, it is the Examiner's position that selecting the best materials for a particular application would have been obvious to one of ordinary skill level in the art.

11. Claims 8-9, 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 2,424,762 to Loeb in view of USPN 4,993,783 to Omholt and USPN 5,123,139 to Leppert.

Regarding claims 8 and 21, Loeb teaches an object (first object) mounted on a display card (backer/stabilizer) including a wire having first and second ends (affixing element) and a method of producing the same. The display card (backer/stabilizer) includes two openings (see Fig. 2) through which the ends of the wire are fitted, and the first and second ends of the wire (affixing element) are coupled together (see 15 in Fig. 5) to provide a coupling of the object to the card (backer/stabilizer). The reference is silent with respect to the attachment of releasably attachable units to the back of the display card. Omholt teaches a display unit using Velcro attachment means for displaying merchandise. It would have been obvious to one of ordinary skill in the art to use the display unit disclosed by Omholt in its intended fashion to display the display card of Loeb. Therefore, it would have been obvious to adhere a first releasably

Art Unit: 1775

attachable Velcro unit to the back of the card taught by Loeb, so that it may be releasably attached to the carpet/Velcro/hook and loop covered vertical display wall (second releasably attachable unit) (Omholt col 3, lines 50-59). Although Omholt is silent with respect to the means of attaching the carpet/Velcro/hook and loop material attachable to the display, it would have been obvious to one of ordinary skill in the art to select the best materials for the specific application, including an adhesive strip such as the one disclosed in USPN 5,123,139 to Leppert (col 3, lines 24-27) used to adhere Velcro to a surface.

Regarding claim 9, the card is made of rigid cardboard (Loeb col 2, lines 4-6). Selection of the best materials for a particular application is within the ordinary skill level of one in the art, therefore absent a showing of unexpected results with respect to the claimed plastic or card stock materials, it would have been obvious to one of ordinary skill in the art to use the claimed materials based on the ultimate intended use of the display card.

12. Claims 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Loeb, Omholt and Leppert as applied to claim 21 above, and further in view of USPN 5,896,592 to Santa Cruz and USPN 5,004,144 to Selga.

Regarding claims 22-23, although Loeb, Omholt and Leppert are silent with respect to the means of attaching the first releasably attachable Velcro unit to the back of the display card (backer/stabilizer), USPN 5,896,592 to Santa Cruz teaches glue as an attachment means (col 3, lines 44-46), USPN 5,004,144 to Selga teaches sewing as an attachment means (col 2, lines 56-60) and USPN 5,123,139 to Leppert teaches foam adhesive as an attachment means (col 3, lines 24-27). Absent a showing of criticality with the claimed attachment means it is the Examiner's

Art Unit: 1775

position that it would have been obvious to one of ordinary skill in the art to use the best materials suited for a particular application, including those taught by Santa Cruz, Selga and Leppert and the other claimed materials, to attach Velcro to an object because they are notoriously well-known attachment means.

13. Claims 39-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over *The American Heritage Dictionary of the English Language, Third Edition* in view of USPN 5,123,139 to Leppert.

Regarding claims 39 and 41-42, the very definition of “Velcro” clearly anticipates an attachment device for a first solid object (reattachable object) to be releasably attached to a second solid object. Velcro by definition comprises first and second releasably attachable units, each attached to an object by an attachment means.

Regarding claim 40, although references do not always disclose specific means of attaching Velcro to an object, the selection of the best notoriously well-known attachment means for a particular application would be obvious to one of ordinary skill in the art. Such obvious and notoriously well-known methods of attaching Velcro include the adhesive foam unit taught by USPN 5,123,139 to Leppert (col 3, lines 24-27).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arden B. Sperty whose telephone number is 703-305-3143. The examiner can normally be reached on M-R, 08:00-16:00.



Art Unit: 1775

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Deborah Jones can be reached on 703-308-3822. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

*ABSperty*  
abs

May 2, 2003

*Deborah Jones*  
DEBORAH JONES  
SUPERVISORY PATENT EXAMINER